

AMENDED IN ASSEMBLY SEPTEMBER 2, 2005

AMENDED IN ASSEMBLY JUNE 29, 2005

AMENDED IN SENATE MAY 25, 2005

AMENDED IN SENATE MAY 5, 2005

AMENDED IN SENATE APRIL 11, 2005

SENATE BILL

No. 959

Introduced by Senator Kehoe

February 22, 2005

An act to amend Sections 20340 and 20341 of the Public Contract Code, and to amend Sections 120100, 120105, 120220, 120224.1, 120224.3, 120224.4, 120260, 120264, 120300, 120301, 120302, 120351, 120352, 120355, 120400, 120452, 120508, 120540, 120630, and 120631 of, to add ~~Sections 120220.5 and 120682~~ *Section 120220.5* to, to repeal Sections 120262 and 120353 of, and to repeal and add Sections 120202, 120222, and 120350 of, the Public Utilities Code, relating to transportation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 959, as amended, Kehoe. San Diego Metropolitan Transit Development Board.

Existing law, the Mills-Deddeh Transit Development Act, creates the San Diego Metropolitan Transit Development Board, which is authorized to perform certain transportation functions in a portion of the County of San Diego, including planning and constructing exclusive public mass transit guideways. Under existing law, the board is authorized to enter into contracts for the acquisition of goods and services and is required to comply with specified requirements in

that contracting process. Existing law authorizes the board to issue revenue bonds and to borrow money in accordance with certain procedures.

This bill would extend various types of benefits to the board that are accorded under existing law to other public agencies. The bill would revise the board's contracting requirements and its responsibilities for planning and constructing exclusive public mass transit guideways, specifying that the board provide input on those matters to the San Diego Association of Governments (SDAG). The bill would name SDAG the designated recipient of federal transit funds and would require the board to administer its transportation funding and its public transit system in conformity with the San Diego Regional Transportation Consolidation Act. ~~The bill would authorize the board to issue pension obligation bonds.~~

Because the bill would require the board to assume additional responsibilities, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 20340 of the Public Contract Code is
- 2 amended to read:
- 3 20340. The provisions of this article shall apply to contracts
- 4 by the San Diego Metropolitan Transit Development Board, as
- 5 provided for in Division 11 (commencing with Section 120000)
- 6 of the Public Utilities Code.
- 7 SEC. 2. Section 20341 of the Public Contract Code is
- 8 amended to read:
- 9 20341. (a) Except as provided in subdivision (c), contracts
- 10 for construction in excess of fifty thousand dollars (\$50,000)
- 11 shall be awarded to the lowest responsible bidder submitting a

1 responsive bid after competitive bidding, except in emergency
2 declared by the vote of two-thirds of the membership of the
3 board. If the expected construction contract exceeds one
4 thousand dollars (\$1,000) and does not exceed fifty thousand
5 dollars (\$50,000), the board shall seek a minimum of three
6 quotations, either written or oral, that permit prices and other
7 terms to be compared, and the board shall award the contract to
8 the bidder who submitted the lowest quotation.

9 (b) If no bids are received, the project may be performed by a
10 negotiated contract.

11 (c) This section does not apply to the Los Angeles County
12 Metropolitan Transportation Authority.

13 SEC. 3. Section 120100 of the Public Utilities Code is
14 amended to read:

15 120100. The board at its first meeting, and thereafter annually
16 at the first meeting in January, shall elect a vice chair who shall
17 preside in the absence of the chair. In the event of the absence or
18 inability to act by the chair or vice chair, the chair pro tempore
19 shall preside.

20 SEC. 4. Section 120105 of the Public Utilities Code is
21 amended to read:

22 120105. The board shall perform the following duties:

23 (a) Determine whether to operate exclusive public mass transit
24 guideways or to let contracts for their operation in conformity
25 with state labor laws and subdivision (d) of Section 120508.

26 (b) Determine the means to finance the operation of public
27 mass transit guideways.

28 (c) Adopt an annual budget and fix the compensation of its
29 officers and employees.

30 (d) Adopt an administrative code, by ordinance, that shall
31 prescribe the powers and duties of board officers, the method of
32 appointment of board employees, and methods, procedures, and
33 systems of operation and management of the board. The
34 administrative code shall also provide for, among other things,
35 the appointment of a general manager or chief executive officer,
36 and the organization of the employees of the board into units for
37 finance and administration, planning and operations, property
38 acquisition and management, and community relations, and other
39 units as the board deems necessary.

1 (e) Cause a postaudit of the financial transactions and records
2 of the board to be made at least annually by a certified public
3 accountant.

4 (f) Adopt all ordinances and make all rules and regulations
5 proper or necessary to regulate the use, operation, and
6 maintenance of its property and facilities, including its public
7 transit systems and related transportation facilities and services
8 operating within its area of jurisdiction, and to carry into effect
9 the powers granted to the board.

10 (g) Appoint such advisory commissions as it deems necessary.

11 (h) Do any and all things necessary to carry out the purposes
12 of this division.

13 SEC. 5. Section 120202 of the Public Utilities Code is
14 repealed.

15 SEC. 6. Section 120202 is added to the Public Utilities Code,
16 to read:

17 120202. (a) All of the privileges, immunities from liability,
18 and exemptions from laws, ordinances, and rules, and all
19 pension, relief, disability, workers' compensation, and other
20 benefits that apply to the activity of officers, agents, or
21 employees of a public agency when performing their respective
22 functions shall apply to employees of the board, and to any
23 nonprofit public benefit corporation of which the board is the
24 sole member.

25 (b) All claims for money or damages against the board or its
26 employees, and against any nonprofit public benefit corporation
27 of which the board is the sole member or the employees of that
28 corporation, shall be governed by Part 1 (commencing with
29 Section 810), Part 2 (commencing with Section 814), Part 3
30 (commencing with Section 900), and Part 4 (commencing with
31 Section 940) of Division 3.6 of Title 1 of the Government Code
32 applicable to public agencies and their employees, or by other
33 statutes or regulations expressly applicable thereto.

34 SEC. 7. Section 120220 of the Public Utilities Code is
35 amended to read:

36 120220. The board may make contracts and enter into
37 stipulations of any nature whatsoever, either in connection with
38 eminent domain proceedings or otherwise, including, without
39 limiting the generality of the foregoing, contracts and stipulations
40 to indemnify and save harmless, to employ labor, and to do all

1 acts necessary and convenient for the full exercise of the powers
2 granted in this division.

3 SEC. 8. Section 120220.5 is added to the Public Utilities
4 Code, to read:

5 120220.5. The board may provide and maintain by contract
6 with a public agency or by other means, a security force to
7 enforce its regulations, to preserve and protect any public transit
8 system or project financed pursuant to this division, and to
9 preserve and protect the public peace, health, and safety with
10 respect to its system or projects. Alternatively, the board may
11 contract with a private patrol operator licensed pursuant to
12 Chapter 11.5 (commencing with Section 7580) of Division 3 of
13 the Business and Professions Code, with the county sheriff and
14 municipal police departments within the areas described in
15 Section 120054, and with other transit development boards for
16 security, police, and related services.

17 SEC. 9. Section 120222 of the Public Utilities Code is
18 repealed.

19 SEC. 10. Section 120222 is added to the Public Utilities
20 Code, to read:

21 120222. (a) The Legislature finds and declares that a
22 compelling interest exists in ensuring that all federal, state, local,
23 and private funds available to the board are captured and used in
24 a timely manner. In order to maximize the use of federal, state,
25 local, and private funds and to maintain a competitive posture in
26 seeking supplemental federal funds, the board shall have the
27 authority to establish and use a flexible contracting process to
28 maximize its efficient use of public funds.

29 (b) Except in cases when an article of a specified brand or
30 trade name is the only article that will properly meet the needs of
31 the board or in an emergency declared by the vote of two-thirds
32 of the membership of the board, all contracts for the acquisition
33 or lease of materials, supplies, or equipment in an amount of one
34 hundred thousand dollars (\$100,000), or in excess of that amount
35 as authorized by the board, shall be made or entered into with the
36 lowest responsible bidder meeting specifications. For purposes of
37 determining the lowest bid, the amount of sales tax shall be
38 excluded from the total amount of the bid. When the expected
39 purchase amount of the contract exceeds five thousand dollars
40 (\$5,000) and does not exceed one hundred thousand dollars

1 (\$100,000), the board shall seek a minimum of three quotations,
2 either written or oral, to permit comparison of prices and other
3 terms.

4 (c) Except in cases of an emergency declared by the vote of
5 two-thirds of the membership of the board, the board shall for all
6 contracts for the acquisition of services that exceed one hundred
7 thousand dollars (\$100,000), that will not be performed by an
8 entity described in Section 120221.5, and that are not within the
9 category of services defined in Section 4525 of the Government
10 Code, solicit bids in writing and award the contract in a
11 competitive procurement process that is in the best interest of the
12 board, including, but not limited to, a negotiated procurement
13 that may or may not evaluate price as a consideration. When the
14 expected amount of the service contract exceeds five thousand
15 dollars (\$5,000) and does not exceed one hundred thousand
16 dollars (100,000), the board shall seek a minimum of three
17 quotations, either written or oral, to permit comparison of prices
18 and other terms.

19 (d) The board shall award contracts for architectural,
20 landscape architectural, engineering, environmental, land
21 surveying services, and construction project management
22 services that are in excess of one hundred thousand dollars
23 (\$100,000) in accordance with the provisions of Chapter 10
24 (commencing with Section 4525) of Division 5 of Title 1 of the
25 Government Code.

26 (e) Notwithstanding any other provisions of this chapter, the
27 board may use any procurement method authorized for state or
28 local agencies under state or federal law, including, but not
29 limited to, a competitive negotiation process in accordance with
30 the provisions of Article 7.5 (commencing with Section 20216)
31 of Chapter 1 of Part 3 of Division 2 of the Public Contract Code.
32 The board shall maintain acquisition and contracting guidelines
33 and comply with those guidelines in the procurement of all goods
34 and services.

35 (f) Provisions in any federally funded contract concerning
36 disadvantaged business enterprises that are in accordance with
37 the request for proposals shall not be subject to negotiation with
38 the successful bidder.

39 SEC. 11. Section 120224.1 of the Public Utilities Code is
40 amended to read:

1 120224.1. (a) Upon determining that immediate remedial
2 measures to avert or alleviate damage to, or to repair or restore
3 damaged or destroyed property of, the board are necessary in
4 order to insure that the facilities of the board are available to
5 serve the transportation needs of the general public or to comply
6 with any state or federal regulation with respect to the operation
7 of public transportation services, and upon determining that
8 available remedial measures, including procurement in
9 compliance with Sections 120222, and 120223, are inadequate,
10 the general manager or chief executive officer may authorize the
11 expenditure of money previously appropriated by the board
12 specifically for the direct purchases of goods and services,
13 without observance of the provisions of those sections.

14 (b) The general manager or chief executive officer, after the
15 expenditure authorized under subdivision (a) has been made,
16 shall submit to the board a full report explaining the necessity for
17 that action.

18 SEC. 12. Section 120224.3 of the Public Utilities Code is
19 amended to read:

20 120224.3. Notwithstanding Section 120222, the board may
21 direct the purchase of any supply, equipment, or materials
22 without observance of any provision requiring contracts, bids, or
23 advertisements upon a finding by two-thirds of all members of
24 the board that there is only a single source of procurement
25 therefor and that the purchase is for the sole purpose of
26 duplicating, repairing, or replacing supply, equipment, or
27 materials that are in use, including upgrades or migrations of
28 proprietary intellectual property.

29 SEC. 13. Section 120224.4 of the Public Utilities Code is
30 amended to read:

31 120224.4. (a) A person who submits, or who plans to submit,
32 a proposal in response to a procurement solicitation may protest
33 any acquisition conducted in accordance with Sections 120222
34 and 120223 as follows:

35 (1) Protests based on the content of the procurement
36 solicitation shall be filed with the board within 10 calendar days
37 after the procurement solicitation is first advertised. The general
38 manager or the chief executive officer, or the designee of the
39 general manager or chief executive officer, shall issue a written
40 decision on the protest prior to opening of the procurement

1 solicitation. A protest may be renewed by refileing the protest
2 with the board within 15 calendar days after the mailing of the
3 notice of the intent to award.

4 (2) Any bidder may protest the intent to award on any ground
5 not based upon the content of the procurement solicitation by
6 filing a protest with the board within 15 calendar days after the
7 mailing of the notice of the intent to award.

8 (3) Any protest shall contain a full and complete written
9 statement specifying in detail the grounds of the protest and the
10 facts supporting the protest. Protestors shall have an opportunity
11 to appear and be heard before the board prior to the opening of
12 the procurement solicitation in the case of protests based on the
13 content of the procurement solicitation, or prior to final award in
14 the case of protests based on other grounds or the renewal of
15 protests based on the content of the procurement solicitation.

16 (b) The decision of the protest by the board shall be in writing
17 and constitutes a final administrative decision for purposes of
18 judicial review pursuant to Section 1094.6 of the Code of Civil
19 Procedure.

20 SEC. 14. Section 120260 of the Public Utilities Code is
21 amended to read:

22 120260. The board shall provide input to the San Diego
23 Association of Governments on the planning and construction of
24 exclusive public mass transit guideways in the area under its
25 jurisdiction in conformance with the California Transportation
26 Plan and the regional transportation plan developed pursuant to
27 Chapter 2.5 (commencing with Section 65080.1) of Division 1 of
28 Title 7 of the Government Code.

29 SEC. 15. Section 120262 of the Public Utilities Code is
30 repealed.

31 SEC. 16. Section 120264 of the Public Utilities Code is
32 amended to read:

33 120264. The transit development board may acquire,
34 construct, maintain, and operate (or let a contract in conformity
35 with state labor laws and subdivision (d) of Section 120508 to
36 operate) public transit systems and related transportation
37 facilities and services as it deems necessary to carry out the
38 purposes of this division in conformity with, and to the extent
39 provided in, the San Diego Regional Transportation
40 Consolidation Act (Chapter 3 (commencing with Section

1 132350) of Division 12.7). The various systems, facilities, and
2 services may be administered by the transit development board
3 under the name of the San Diego Metropolitan Transit System.

4 SEC. 17. Section 120300 of the Public Utilities Code is
5 amended to read:

6 120300. The San Diego Association of Governments that
7 includes the area of the board shall be responsible for long-term
8 transportation system planning in that area.

9 The planning shall be directed to, among other things:

- 10 (a) Identification of corridors of travel.
- 11 (b) Definition of the transportation problems of each corridor.
- 12 (c) Definition of the transportation goals for each corridor.
- 13 (d) Definition of land use goals, with the concurrence of
14 affected local jurisdiction, to be supported by transportation
15 investment decisions in each corridor.
- 16 (e) Recommendation of priority corridors for guideway
17 development.
- 18 (f) Recommendation of the mix of alternative transportation
19 modes appropriate for deployment in light of transportation
20 needs and goals for each corridor.
- 21 (g) Recommendation of environmental, economic, energy, and
22 social policies that should guide transportation investment
23 decision within corridors.

24 SEC. 18. Section 120301 of the Public Utilities Code is
25 amended to read:

26 120301. With respect to the area under its jurisdiction, the
27 board shall be responsible for operational planning, which
28 includes all planning and monitoring necessary for the operation,
29 implementation, modification, and elimination of public
30 transportation services operated by the board.

31 SEC. 19. Section 120302 of the Public Utilities Code is
32 amended to read:

33 120302. Notice of the time and place of the public hearing by
34 the board shall be published pursuant to Section 6061 of the
35 Government Code, and shall be published not later than the 15th
36 day prior to the date of the hearing.

37 The materials for the public hearing shall be available for
38 public inspection at least 15 days prior to the hearing.

39 SEC. 20. Section 120350 of the Public Utilities Code is
40 repealed.

1 SEC. 21. Section 120350 is added to the Public Utilities
2 Code, to read:

3 120350. The provisions of Article 6 (commencing with
4 Section 120350) and Article 7 (commencing with Section
5 120400) shall be implemented in conformity with, and subject to,
6 the San Diego Regional Transportation Consolidation Act
7 (Chapter 3 (commencing with Section 132350) of Division 12.7).

8 SEC. 22. Section 120351 of the Public Utilities Code is
9 amended to read:

10 120351. The designated recipient for purposes of Chapter 53
11 (commencing with Section 5301) of Subtitle III of Title 49 of the
12 United States Code shall be the San Diego Association of
13 Governments, and it shall be responsible for allocating federal
14 transit funds to eligible recipients. The board shall prepare the
15 program of projects for transit capital and operating assistance
16 projects in its area of jurisdiction for receipt of federal funds. The
17 San Diego Association of Governments shall allocate the funds
18 to the board to fund its projects. If a dispute regarding the
19 allocation of funds arises between the board and the North San
20 Diego County Transit Development Board, the two boards shall
21 negotiate in good faith to resolve the dispute. If the negotiation
22 does not result in resolving the dispute prior to adoption of the
23 annual regional transportation improvement program, the San
24 Diego Association of Governments shall resolve the dispute and
25 allocate the funds accordingly.

26 SEC. 23. Section 120352 of the Public Utilities Code is
27 amended to read:

28 120352. The board may receive any money pursuant to
29 Chapter 53 (commencing with Section 5301) of Subtitle III of
30 Title 49 of the United States Code for mass transit purposes, and
31 reallocate that money for those purposes in accordance with
32 federal law and rules and regulations.

33 SEC. 24. Section 120353 of the Public Utilities Code is
34 repealed.

35 SEC. 25. Section 120355 of the Public Utilities Code is
36 amended to read:

37 120355. The board may take all action necessary to obtain
38 funding available pursuant to Chapter 53 (commencing with
39 Section 5301) of Subtitle III of Title 49 of the United States
40 Code.

1 SEC. 26. Section 120400 of the Public Utilities Code is
2 amended to read:

3 120400. The board may accept contributions, grants, or loans
4 from any public agency or the United States or any department,
5 instrumentality, or agency thereof, for the purpose of financing
6 the planning, acquisition, construction, or operation of public
7 transportation services, and may enter into contracts and
8 cooperate with, and accept cooperation from, any public agency
9 or the United States, or agency thereof, in the planning,
10 acquisition, construction, or operation of any of those public
11 transportation services in accordance with any legislation that
12 Congress or the Legislature of the State of California may have
13 heretofore adopted or may hereafter adopt, under which aid,
14 assistance, and cooperation may be furnished by the United
15 States or any public agency in the planning, acquisition,
16 construction, or operation of any of those public transportation
17 services. The board may do any and all things necessary in order
18 to avail itself of this aid, assistance, and cooperation under any
19 federal or state legislation now or hereafter enacted.

20 SEC. 27. Section 120452 of the Public Utilities Code is
21 amended to read:

22 120452. Violation of any ordinance, rule, or regulation
23 enacted by the board prohibiting the unauthorized entering into,
24 climbing upon, holding onto, or in any manner attaching oneself
25 to vehicles operated upon exclusive public mass transit
26 guideways owned or controlled by the board, is an infraction
27 punishable by a fine not exceeding fifty dollars (\$50), except that
28 a violation by a person, after the first conviction under this
29 section, is a misdemeanor punishable by a fine not exceeding five
30 hundred dollars (\$500) or by imprisonment in a county jail not
31 exceeding six months, or by both that fine and imprisonment.

32 SEC. 28. Section 120508 of the Public Utilities Code is
33 amended to read:

34 120508. (a) This article also applies to the employee
35 relations of employees of a nonprofit entity that operates public
36 mass transit services and that is solely owned by the board. For
37 employee relations regarding these employees, the term “board,”
38 as used in this article, means the board and the board of directors
39 of the nonprofit entity as the joint employer of the employees.

1 (b) The board may, at any time in its sole discretion, abolish
2 any nonprofit entity or merge any nonprofit entity with another
3 nonprofit entity or with the board.

4 (c) Upon abolishing or merging a nonprofit entity pursuant to
5 subdivision (b), the board shall become the sole employer of the
6 employees of the nonprofit entity and shall assume sole
7 responsibility to observe all existing labor contracts established
8 and maintained pursuant to this article.

9 (d) Except as may be agreed upon through the collective
10 bargaining process, nothing in this section shall prohibit or limit
11 the right of the board to contract with common carriers of
12 persons operating under a franchise, license, or other agreement.
13 Any provision in an existing collective bargaining agreement
14 made applicable to the board in its capacity as a joint employer
15 with a nonprofit entity pursuant to subdivision (a) or sole
16 successor employer pursuant to subdivision (b) that is intended to
17 prohibit or limit the right of a nonprofit entity to contract out
18 covered bargaining unit services to another common carrier of
19 persons shall not be binding upon the board with respect to any
20 contract for services entered into, renewed, or extended by the
21 board prior to January 1, 2004, and thereafter shall apply only to
22 contracts for bargaining unit services covered by an existing
23 collective bargaining agreement assumed by or binding upon the
24 board as a joint employer unless otherwise agreed upon through
25 the collective bargaining process. *The amendments to this*
26 *subdivision made by Senate Bill 959 of the 2005-06 Regular*
27 *Session are intended solely to clarify existing law and shall not*
28 *be interpreted either to enlarge or contract the board's right to*
29 *contract out for public transportation services.*

30 SEC. 29. Section 120540 of the Public Utilities Code is
31 amended to read:

32 120540. It shall be a condition of the operation of any transit
33 facility owned or controlled by the board that Section 5333 of
34 Title 49 of the United States Code shall be given effect to the
35 extent required by law.

36 SEC. 30. Section 120630 of the Public Utilities Code is
37 amended to read:

38 120630. The board may issue bonds, payable from revenue of
39 any facility or enterprise to be acquired or constructed by, or on
40 behalf of, the board, in the manner provided by the Revenue

Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code), and all of the provisions of that law are applicable to the board.

SEC. 31. Section 120631 of the Public Utilities Code is amended to read:

120631. The board is a local agency within the meaning of the Revenue Bond Law of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of Division 2 of Title 5 of the Government Code). The term “enterprise,” as used in the Revenue Bond Law of 1941, for all purposes of this article, includes the transit system or any or all transit facilities and all additions, extensions, and improvements thereto authorized to be acquired, constructed, or completed by the board.

The board may issue revenue bonds under the Revenue Bond Law of 1941 for any one or more transit facilities authorized to be acquired, constructed, or completed by, or on behalf of, the board or, in the alternative, the board may issue revenue bonds under the Revenue Bond Law of 1941 for the acquisition, construction, and completion of any one of those transit facilities.

Nothing in this article prohibits the board from availing itself of, or making use of, any procedure provided in this chapter for the issuance of bonds of any type or character for any of the transit facilities authorized hereunder, and all proceedings may be carried on simultaneously or, in the alternative, as the board may determine.

~~SEC. 32. Section 120682 is added to the Public Utilities Code, to read:~~

~~120682. The board or any nonprofit corporation of which the board is the sole member, may issue pension obligation bonds.~~

~~SEC. 33.~~

SEC. 32. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

~~SEC. 34.~~

SEC. 33. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety

1 within the meaning of Article IV of the Constitution and shall go
2 into immediate effect. The facts constituting the necessity are:
3 In order to make needed changes to the San Diego
4 Metropolitan Transit Development Board as soon as possible, it
5 is necessary that this act take effect immediately.

O